

Plain and Standardized Tobacco Packaging: Correcting the Myths

MYTH

Plain packaging won't work, so why do it?

FACT

This is a key tobacco industry campaign tag line. But consider the lack of logic here—if plain and standardized packaging won't affect tobacco sales, why are tobacco companies fighting tooth and nail to oppose it?

In Australia, the first country to implement plain packaging, tobacco companies waged a nasty campaign: they created a sham retail organization to front their opposition (the Alliance of Australian Retailers);¹ they spent millions of dollars on a highly orchestrated public relations strategy;² and they launched three separate legal challenges (but have lost both of the decided cases).³ The companies would not have done all of this if they did not fear the impact of plain packaging on their bottom line.

Now consider the evidence that the plain packaging *will* work. According to a large and growing body of research, including three years of experience in Australia, plain and standardized packaging will:

- ✓ Prevent tobacco packs from creating and communicating brand images
- ✓ Diminish the appeal of brand imagery
- ✓ Increase the effectiveness of health warnings
- ✓ Reduce package-based deception
- ✓ Reduce smoking in outdoor public places
- ✓ Reduce the display of packs in public places
- ✓ Decrease the market share of premium brands
- ✓ Reduce tobacco use
- ✓ Reduce tobacco company profitability.

MYTH

People don't buy cigarettes because of the packaging

FACT

Packaging has a significant impact on tobacco use, because packaging is advertising, and advertising increases sales.

Packaging is an important element of the marketing mix and *the most important form of promotion* when most other types of advertising are banned. The 2014 report of the US Surgeon General emphasized that advertising and marketing are primary risk factors for smoking initiation:⁴

Both the industry’s own internal documents and its testimony in court proceedings, as well as widely accepted principles of advertising and marketing, also support the conclusion that tobacco advertising recruits new users during their youth.

With tobacco advertising bans, as international packaging designer Frans van Heertum explained, **“The only thing left is the pack. You have to put your entire brand image into the pack. The pack has to draw new consumers for you. That’s why every small part of the pack is being used in the most innovative way...”**⁵

The packaging communicates many messages about the product inside and about smoking in general, both of which influence decisions about which brand to buy and indeed whether to smoke at all. For example, packs have been specifically designed to target weight-conscious young women (see Imperial Tobacco Canada’s Vogue Superslims pack below left) and image-conscious young men (see Rothman, Benson & Hedges’ Rooftop brand [the global Marlboro brand as sold in Canada] 2010 Performance Edition pack below right that sounds like a lighter when opened).



Imperial Tobacco Canada
Vogue Superslims



Rothmans, Benson & Hedges
Rooftop, Performance Edition

Lastly, if packaging had no impact on consumers, tobacco companies would not spend millions of dollars developing and introducing new designs. As Sir Cyril Chantler discovered during his independent review of the evidence regarding standardised packaging commissioned by the UK government, over the period of time that restrictions on tobacco promotion were increasing so was the pace of change in pack design—tobacco companies more frequently launched complete pack redesigns; increased their use of limited edition packs; and introduced innovative pack shapes and opening styles.⁶

MYTH

Plain packaging will have no effect on tobacco use

FACT

Plain and standardized packaging has already reduced tobacco use in Australia, and there is no reason that it will not have the same effect in Canada. As an editorial in Canada's *Marketing Magazine* concluded:⁷

"[Is] anyone naive enough to believe that the very act of banning snazzy multi-coloured packaging won't have some effect? At the very least, [plain packaging] will make it obvious to consumers—especially impressionable young consumers—that cigarettes should not be treated like any other product. The ban on packaging would underscore the message that cigarettes ... are a pariah product."

Plain and standardized packaging is part of a comprehensive set of tobacco control interventions that together help to reduce tobacco use. The impact of packaging reforms is expected to grow over time, as fewer adolescents begin smoking than otherwise would have and more smokers cut down and quit in response to the primary impacts of plain and standardized packaging:^{8,9}

- (1) diminished appeal of tobacco products;
- (2) increased effectiveness of the health warnings; and
- (3) reduced ability of the product and its packaging to mislead consumers about the harmful effects of tobacco use.

MYTH

Plain packaging has had no effect on tobacco use in Australia

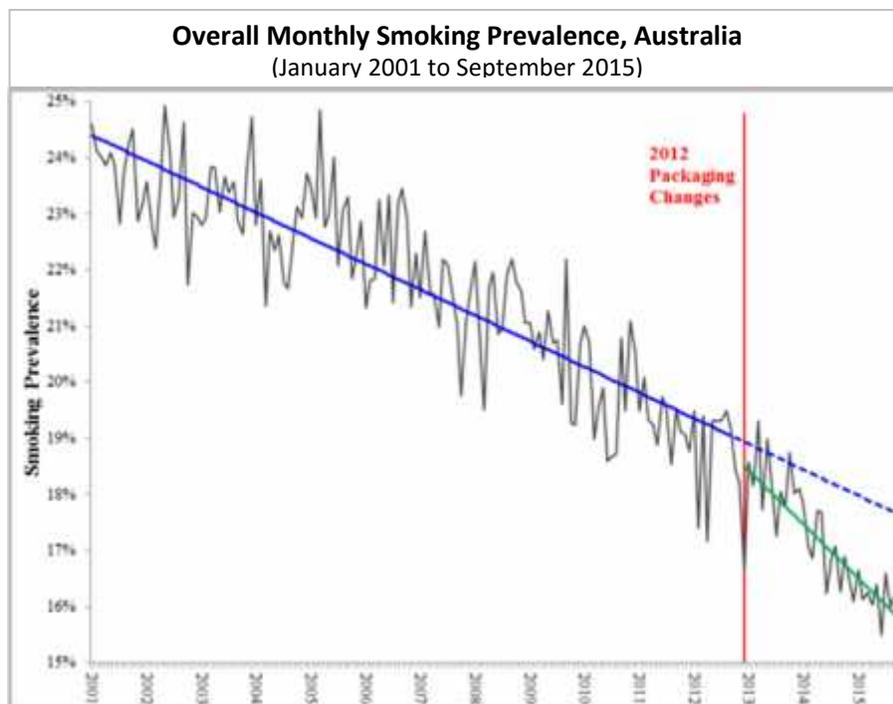
FACT

A thorough Post-Implementation Review completed by the Australian Department of Health, including an econometric analysis conducted by Dr. Tasneem Chipty, demonstrates unequivocally that plain packaging is causing tobacco use to drop:¹⁰

"All of the major datasets examined ... showed on-going drops in national smoking prevalence in Australia."

The decrease in prevalence from 19.4% to 17.2% is not solely due to plain packaging, as other measures were introduced during the same period, including tax increases and intensive mass media campaigns. However, the packaging measures are responsible for one-quarter of the total decline seen over the 34-month period, from December 2012 to October 2015.¹¹

The graph below shows the overall decline in smoking prevalence in Australia over the last fifteen years (the blue trend line) and illustrates that the decline in prevalence accelerated following the introduction of the packaging reforms in 2012 (the green trend line).¹²



The Post-Implementation Review, supported by numerous studies published in peer-reviewed journals, also shows that plain packaging is having an effect on many of the attitudes, beliefs, and behaviours that influence tobacco use:

- Plain packaging led to “rapid and substantial” declines in the appeal of tobacco product in terms of quality, satisfaction, and value for money and in the appeal of the packaging among current smokers, especially young adult smokers.¹³
- Plain packaging led to increased quit attempts and pack concealment both during the transition period and in the first year after implementation.¹⁴
- Plain packaging resulted in a substantial increase in calls to the Quitline.¹⁵
- Plain packaging reduced the display of cigarette packs in public places.¹⁶
- Plain packaging led to sustained reductions in smoking at outdoor restaurants, bars, and cafés, particularly where children were present.¹⁷
- Plain packaging gave rise to decreases in positive perceptions among youth about brand characteristics and pack image.¹⁸

MYTH

Tobacco use among Australian teens *increased* after plain packaging

FACT

Tobacco industry forces have been spreading the claim that smoking increased among Australian teens after plain packaging was implemented. What the tobacco companies don't say is that the apparent increase in the youth smoking rate in one survey was *not statistically significant!*

The National Drug Strategy Household Survey (NDSHS) shows that the smoking rate among 12-to-17-year olds in Australia went from 2.5% to 3.4% from 2010 to 2013, but this change was *not statistically significant*—as was made clear in the survey report.¹⁹ The NDSHS surveys only about 1,500 teenagers using a home based questionnaire and therefore is not Australia’s recognized source for data on adolescent smoking.

In contrast, the Australian Secondary School Students Alcohol and Drug survey (ASSAD) is an anonymous, school-based survey of approximately 23,000 students. With a much larger sample size, the ASSAD is much better able to detect small changes in tobacco use by Australian youth. The 2014 ASSAD shows a significant decline in current smoking among Australian teens aged 12-17 years between 2011 and 2014, from 6.7% to 5.1%.²⁰

MYTH

Plain packaging will increase contraband

FACT

There is no reason to believe that plain packaging will increase contraband in Canada. The overt and covert markings that are part of the government-mandated tax stamp will remain on plain packs. The tax stamps are difficult to forge, and they facilitate the tracking and tracing of illicit goods.

Tobacco companies, together with their front groups and allies in the retail sector and right-wing think tanks, claim that contraband will increase as a result of virtually all effective tobacco control interventions—excise tax increases, display bans, restrictions on flavourings, etc. Numerous studies show that contraband flourishes where there is opportunity, primarily as a result of lax enforcement. However, due to the concerted and coordinated efforts of municipal, provincial, and federal law enforcement authorities, contraband has declined considerably in Canada since 2009, a fact that tobacco companies readily report only to their shareholders.

MYTH

Plain packaging in Australia caused an increase in contraband

FACT

Seizures of contraband in Australia were significantly lower in 2014-15 than in the year before the introduction of plain packaging.²¹

Reports showing a major increase in contraband in Australia since plain packaging were all commissioned by tobacco companies. Five such reports published by KPMG LLP all come with strong disclaimers that the terms of reference for the reports were set by the tobacco companies and that the findings therefore should not be used for any other purpose:

“KPMG LLP wishes all parties to be aware that KPMG LLP’s work for the Addressees [British American Tobacco Australia, Philip Morris Limited and Imperial Tobacco Australia Limited] was performed to meet specific terms of reference agreed between the Addressees and KPMG LLP and that there were particular features determined for the purposes of the engagement. The Report should not therefore be regarded as suitable to be used or relied on by any other person or for any other purpose.”²²

Tobacco companies in Australia and their allies frequently claim that plain packaging caused an increase in contraband in Australia, and this claim is often repeated by the media around the world. The facts from reputable sources tell a very different story:

- Seizures by Australian Customs of both illicit loose tobacco and contraband cigarettes were higher in 2012-13 and 2013-14 than in 2011-12, but were nonetheless lower than seizures in 2009-10 and 2007-08—before the introduction of plain packaging.
- Results from the Australian National Drug Strategy Household Survey in 2013 show a significant decline since 2007 in the percentage of smokers who are aware of unbranded tobacco, who have ever smoked it, and who currently use it.²³
- The 2013 National Drug Strategy Household Survey also found that only ten percent of smokers (9.6%) reported purchasing a non-compliant pack, with just under half (4.2%) purchasing 5 packs or less.²⁴

MYTH

Plain packaging will cause prices to drop, leading to an increase in tobacco use

FACT

Evidence to date from Australia does not show that cigarette prices are falling; indeed, prices have continued to increase since plain packaging by more than what is accounted for by tax hikes.

A study of the Recommended Retail Prices of tobacco products in the Australian state of New South Wales found that prices of both cigarettes and roll-your-own tobacco were higher in real terms one year after plain packaging across all three major manufacturers, all three major cigarette price segments, and all major pack sizes. The price increases exceeded increases in inflation-adjusted excise taxes.²⁵

In a comprehensive review of the research on standardised packaging on behalf of the UK government, Sir Cyril Chantler considered the industry’s claim that prices would drop after packaging reform. Based on an analysis of industry claims, economic theory, and the experience to date in Australia, Sir Chantler concluded that plain and standardized packaging should not be expected to produce an overall decrease in price and a resultant increase in tobacco consumption.²⁶

“[E]arly evidence from Australia does not show falling prices; rather price rises have continued over and above tax increases. There is some evidence of trading down towards cheaper brands, but this appears to be a continuation of an ongoing market trend. Were all this to change, the Government can in any case mitigate any price reduction by increasing tobacco taxes.”

MYTH

Plain packaging is unnecessary regulation, since $\frac{3}{4}$ of the pack is already covered by a gruesome health warning and packs aren't visible in stores

FACT

The tobacco package is a mobile billboard, displayed by smokers every time they light up—an average of 5,000 times per smoker per year. **As the former CEO of the Canadian advertising agency MacLaren:Lintas said, “The package is the core of all tobacco marketing. No country has a tobacco advertising ban until it deals with package-based tobacco advertising.”²⁷**

Although packs are no longer displayed at retail, the average smoker takes out his/her pack some 14 times a day²⁸ or about *5,000 times per year!* With about 5.4 million smokers in Canada,²⁹ pack-based promotion is visible to others, including vulnerable youth and young adults and former smokers trying to remain abstinent, more than *27 billion times every year!*

Research in Australia after plain packaging shows that smokers are less likely to display their packs in public places. Two studies that involved observations of tobacco packs displayed by people in outdoor venues following the implementation of plain packaging³⁰ and one year later³¹ both found a decrease in smoking in these venues and a decrease in the number of packs that were clearly visible on tables. The authors conclude that “plain packaging may reduce exposure to tobacco promotion and reduce perceptions of smoking prevalence,” both of which influence youth smoking initiation.

In addition, although cigarette packs have large health warnings, many packaging elements are specifically designed to downplay the graphic warnings and alleviate fears about the health risks of smoking:

- The move from slide-and-shell to flip-top packs in Canada means the graphic image is no longer visible when the pack is opened and the total size of the warning is reduced (see example below).
- The introduction of novel pack sizes and shapes, such as the perfume/lipstick packs, renders the warning text almost illegible and the graphic image too small to be effective. The example below shows the same health warning as it appears on three different pack styles, demonstrating how much more visible, legible, and dramatic the warning is on the larger, slide-and-shell pack.

- Below left: Traditional slide-and-shell pack of 25 king size cigarettes
 Below middle: Fliptop pack of 20 king size cigarettes
 Below right: Perfume pack of 20 superslim cigarettes



- Companies use colour schemes, in particular blue and white packaging, to convey a sense that the cigarettes produce less nicotine and tar and are therefore a ‘healthier’ option.
- Companies use creative terminology to suggest that a particular brand variant is a safer option for the health-concerned smoker, including descriptors such as “smooth” and “mellow,” which replaced the banned terms “light” and “mild.”
- Tobacco companies also frequently put slogans/descriptive text on both the inside and outside of their packs that imply that their product is healthier than others. For example, the inside lip of Player’s True Special Blend slide-and-shell packs promises that “this high quality blend is made of only 100% additive-free Tobacco”; and du Maurier Signature packs boast that they contain “100% Tobacco Nothing Else,” playing to smokers’ mistaken belief that it is the additives in tobacco that cause the harm, not the chemicals produced during combustion.

Numerous research studies show that when cigarette packs are stripped of logos, colours, and other promotional features, and the shape, size, and opening style are standardized, the warning is more noticeable and has a greater influence.³²

MYTH

Plain packaging is a prime example of the government nanny state imposing ineffective regulations on an already over-regulated industry

FACT

If tobacco products were introduced today, their sale would never be legalized. They remain legal in Canada merely because most of the approximately 5 million Canadians who currently smoke are addicted, and it would be impractical to ban the sale of a product on which almost one-fifth of the

population is dependent. However, given the uniquely addictive and toxic nature of tobacco products, strict regulation of both tobacco products and the tobacco industry are warranted.

Plain packaging is one of the measures recommended in the global tobacco treaty—the WHO Framework Convention on Tobacco Control. In fact, it is recommended under Article 11, Packaging and Labelling, as a measure to increase the salience of the health warnings and reduce package-based deception, and under Article 13, Advertising, Promotion and Sponsorship, as an important component of a total ban on promotion. The treaty represents a compendium of evidence-based best practices designed to reduce both the demand for and supply of tobacco products and in so doing reduce the global burden of tobacco-caused disease and death.

MYTH

First tobacco, then what—plain packaging of alcohol, potato chips, toys?

FACT

The fact is that tobacco is unlike any other consumer product, and therefore stringent controls on all aspects of its marketing and sale are warranted. When used *as intended by the manufacturer*, cigarettes kill half of long-term smokers. Unlike products such as alcohol and fast food, there is no safe level of tobacco use.

Because tobacco is uniquely addictive and lethal and is responsible for a global epidemic, there is an international, evidence-based treaty, the World Health Organization Framework Convention on Tobacco Control, to which 180 countries are now Parties. The treaty governs a wide range of tobacco control issues, from tobacco growing, to product contents, to promotion, taxation, sales, and dependence treatment.³³

Why would plain packaging be extended to toys? Clearly there is no need for a global treaty on toys!

MYTH

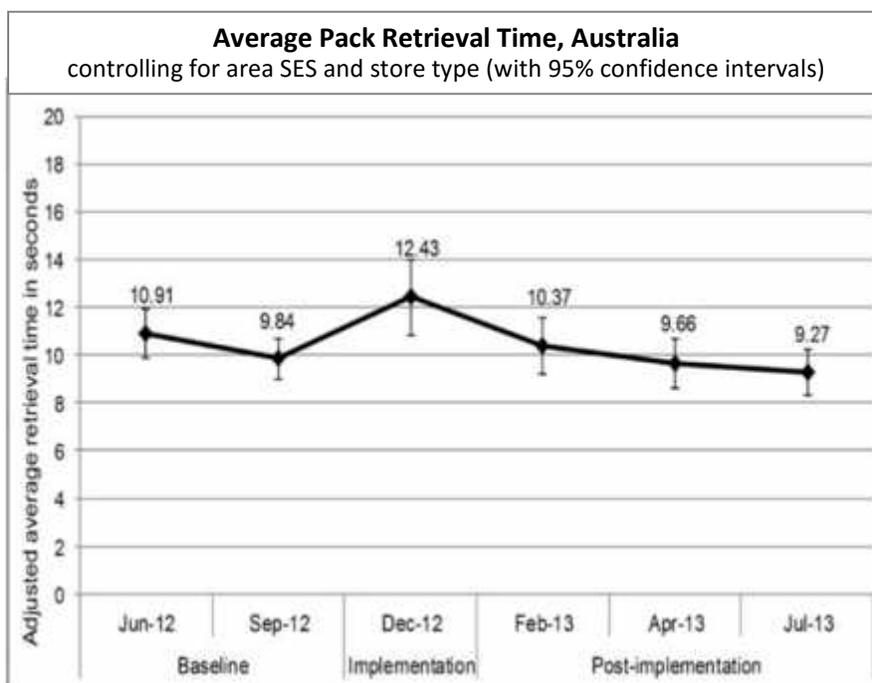
Plain packaging will harm retailers

FACT

Credible studies in Australia found that retailers quickly adjusted to plain packaging.

The tobacco retailer front group created by Big Tobacco in Australia, the Alliance of Australian Retailers, claimed that plain and standardized packaging would make it much more difficult for clerks to identify brands, which would increase transaction times and decrease consumer satisfaction. Four studies have been conducted to date on this issue in Australia since plain packaging came into effect. Two of these were studies funded by Philip Morris that surveyed retailers' subjective perceptions. The two studies that were published in peer-reviewed academic journals and compared actual measures of serving times before and after plain packaging found

that increases in pack retrieval times immediately after implementation were temporary.³⁴ As illustrated in the graph below, following a brief adjustment period, pack retrieval times after plain packaging were no different than those observed when retailers were selling fully branded packs.



MYTH

Plain packaging will cost the federal government millions of dollars to defend the legislation in court, with no guarantee of a win

FACT

Governments should not allow litigation or the threat of litigation by tobacco companies to stop them from exercising their right to regulate in the interest of public health.

The tobacco industry has a long history of challenging in court those legislative measures that will adversely impact its sales and profits. Canadian tobacco companies, for example, challenged the federal *Tobacco Act* in an expensive and protracted ten-year court battle. The *Tobacco Act*, however, was upheld by the Supreme Court, and the tobacco companies were forced to pay the government's legal costs.

Recently it has become a key industry tactic worldwide to use the threat of litigation to prevent or at least delay effective legislative action, particularly by low-resourced countries. Dr. Margaret Chan, Director-General of the World Health Organization, explained:³⁵

Tactics aimed at undermining anti-tobacco campaigns, and subverting the Framework Convention, are ... out in the open and they are extremely aggressive.

The high-profile legal actions targeting Uruguay, Norway, Australia, and Turkey are deliberately designed to instil fear in countries wishing to introduce similarly tough tobacco control measures.

What the industry wants to see is a domino effect. When one country's resolve falters under the pressure of costly, drawn-out litigation and threats of billion-dollar settlements, the industry hopes that others with similar intentions will topple as well.

Governments cannot stop tobacco companies from initiating legal challenges to tobacco control measures, but nor can they allow tobacco companies to hold their health agendas hostage to threats of litigation. And, while there is no guarantee that Canada would win an industry lawsuit against plain and standardized packaging, victories in Australia and the UK give every reason to be optimistic.

MYTH

Plain packaging unlawfully infringes tobacco companies' trademark rights

FACT

To date, governments have won every legal challenge brought by tobacco companies against plain packaging.

The disputes that are currently before the World Trade Organization (WTO), brought initially by five countries with financial support from Philip Morris International and British American Tobacco, allege that Australia's plain packaging requirements breach several trade agreements—the General Agreement on Tariffs and Trade (GATT), the Agreement on Technical Barriers to Trade (TBT), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The disputes claim that plain packaging violates these trade agreements on three grounds: they are discriminatory; they are more trade restrictive than necessary; and they unjustifiably infringe upon trademark rights.³⁶

There is no reason to believe, however, that the tobacco companies will win the WTO challenges. The TRIPS Agreement does not provide a “right to use” trademarks, but rather grants trademark holders the right to exclude others from using the trademark. Plain packaging does not interfere with a tobacco company's right to prevent others from using its trademarks.³⁷ Furthermore, plain packaging does not “confiscate” tobacco company trademarks as the companies claim: tobacco companies are still able to register new tobacco trademarks, use existing word marks on tobacco packages (i.e. the brand name), use their trademarks on communications with distributors and retailers, and use their trademarks on packages intended for export.³⁸

Many legal opinions from various countries contend that plain packaging is an evidence-based measure that imposes justifiable limits on the use of their trademarks by tobacco firms in order to protect public health. This view is summarized well by the McCabe Centre for Justice and Law:³⁹

The [plain packaging] laws are an exercise of Australia's sovereign power to regulate to protect public health, do not discriminate between domestic and imported products, are based on evidence, and have behind them the legal and political force of the global public health treaty, the WHO Framework Convention on Tobacco Control (WHO FCTC), as well as implementation guidelines and other decisions adopted by consensus of the States Parties to the treaty, and other international instruments including the Doha Declaration on TRIPS and Public Health.

MYTH

The government will have to pay the tobacco companies billions in compensation for unlawful ‘confiscation’ of their trademarks

FACT

The question of compensation owed the tobacco companies only becomes relevant if the World Trade Organization rules in the tobacco companies’ favour and, even then, payment of compensation by the government to the companies is highly unlikely.

The UK High Court decision regarding the tobacco companies’ challenge to the regulations on standardised (“plain”) tobacco packaging quashes any concern that the government would have to pay the tobacco companies substantial financial compensation:⁴⁰

The Regulations bear the same characteristics as other regulatory measures designed to further the public interest which, in so doing, impose burdens and costs on the regulated community. Public policy evolves. Political thinking evolves. No individual or company can have an expectation that if it produces and supplies a product that is, or become recognised as, contrary to the public interest that it will be entitled to continue to produce and sell that product, or that if the State comes to prescribe or curtail the product in issue that it will be entitled to compensation (Para 798, page 319).

There are no cases where compensation has been paid for the curtailment of an activity which is unequivocally contrary to the public interest [emphasis added]. In my judgment the facts of the case are exceptional such that even if this were a case of absolute expropriation no compensation would be payable (Para 811, page 324).

Another point to consider is how the tobacco companies can on the one hand claim that plain packaging “won’t work” and on the other claim that they are owed billions in compensation because of the measure.

Lastly, governments around the world have appropriated sometimes substantial portions of tobacco packaging for health warnings, and yet no tobacco company has ever succeeded in resisting this appropriation or in being compensated for any resultant loss of trade.⁴¹

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